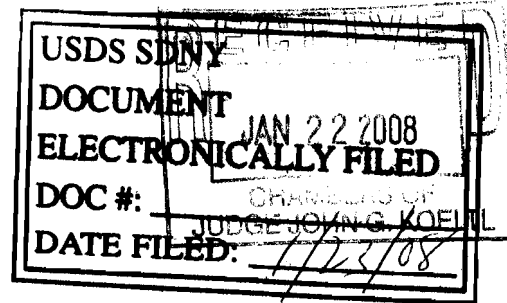


DISTRICT ATTORNEY

OF THE
COUNTY OF NEW YORK
ONE HOGAN PLACE
New York, N. Y. 10013
(212) 335-9000



ROBERT M. MORGENTHAU
DISTRICT ATTORNEY



MEMO ENDORSED

January 22, 2008

BY HAND

Honorable John G. Koeltl
United States District Court
Southern District of New York
500 Pearl Street, Room 1030
New York, New York 10007

APPLICATION GRANTED
SO ORDERED

1/22/08
[Signature]
John G. Koeltl, U.S.D.J.

Re: Smith v. Conway, 07 Civ. 7174 (JGK)

Your Honor:

I am an Assistant District Attorney in New York County, and have been assigned to represent the respondent in the above-captioned habeas corpus proceeding. On December 10, 2007, respondent moved to dismiss the petition as time-barred. By an order dated December 12, 2007, the Court directed petitioner to respond to the motion to dismiss by January 14, 2008 and directed that respondent's reply papers be filed by January 28, 2008.¹

I am now writing to request a brief extension of respondent's time to reply, until Monday, February 4, 2008. The reason for this request is that my commitments in the New York State Appellate Division, First Department, make it almost impossible for me to turn my attention to petitioner's papers until January 30th. I am currently writing a brief that must be filed in the Appellate Division on that day, as well as editing two other briefs for filing that day. I also have oral arguments scheduled before the Appellate Division on January 24th and January 29th, each of which will require some time for preparation and will require me to spend several hours in court. In addition, I am recovering from an illness which has prevented me from working on any of these matters for the last four days. For these reasons, I am requesting an extension of one week to respond to the new information contained in petitioner's reply papers.

¹ The Court's order states that respondent is to reply by "Monday, January 29, 2008." However, January 29th is a Tuesday; accordingly, I assume that it was the Court's intention to set Monday, January 28th as the reply date.

DISTRICT ATTORNEY COUNTY OF NEW YORK

Hon. John G. Koeltl

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January 22, 2007

I apologize for any inconvenience this request may cause and thank you in advance for your consideration of this matter.

Respectfully submitted,



Alice Wiseman (AW-9504)
Assistant District Attorney
(212) 335-4161

cc: Andre Smith (by mail)
02-A-4600
Shawangunk Correctional Facility
P.O. Box 700
Wallkill, NY 12589

STATE OF NEW YORK)
) ss.: Smith v. Conway
COUNTY OF NEW YORK)

Katherine Shirley, being duly sworn, deposes and says that I am not a party to the within action, and I am over 18 years of age.

On January 22, 2008, I served 1 copy/copies of this affirmation on the parties and persons below at the address(es) below designated by him/her/them for that purpose:

- ☐ by delivering the copy/copies to said persons listed personally.
- ☐ by delivering the copy/copies to the offices of said persons and leaving it with a suitable person in each office or in a conspicuous place therein.
- ☒ by mailing the copy/copies to the said person at the address designated for that purpose by depositing the same with the United States Postal Service in a first-class, properly-addressed, postage-paid wrapper.
- ☐ by dispatching the copy/copies to said person at the address designated for that purpose by depositing the copy, enclosed in a properly-addressed wrapper, in the custody of an overnight delivery service for overnight delivery, prior to the latest time designated by said service for overnight delivery.
- ☐ by transmitting the copy/copies to said person by electronic means, at the telephone number designated for that purpose, and having received a signal from the equipment of said person indicating that the transmission was received; and by mailing _____ copy/copies to said person at the address designated for that purpose through the United States Postal Service in a first-class, properly-addressed, postage-paid wrapper.

Andre Smith
02-A-4600
Shawangunk Correctional Facility
P.O. Box 700
Wallkill, NY 12589

Katherine Shirley

Sworn to before me this 22nd
day of January 20 08

[Signature]
Notary Public

OLIVIA SOHMER
Notary Public, State of New York
No. 02S05022722
Qualified in Kings County
Commission Expires April 27, 2010